

Application No.: 10/688,352

Docket No.: 65765-0032

**REMARKS**

Applicant has carefully reviewed the Office Action mailed April 26, 2005. In response to the Office Action, Applicant has amended claims 1, 9, and 13, and canceled claims 2 And 14. By way of this amendment, no new matter has been added. Accordingly, claims 1, 3-13, and 15-20 remain pending in this application. Applicant respectfully requests reconsideration of the present application in view of the above amendment and the following remarks.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Roberts et al.* (U.S. Patent 6,413,611). Applicant respectfully traverses the rejection.

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claims 1, 9, and 13 positively recite “an enclosed gap.” As illustrated in FIGS. 3 and 4, the acoustical gap is enclosed on all sides. Paragraph [0013], sentence 7, notes that a fluid “may be contained within acoustical gap 37, or acoustical gap 37 may be void of any medium.” Therefore, acoustical gap 37 must be enclosed in order to contain the fluid or vacuum therein.

In contrast, Roberts teaches an assembly 16 with substantially parallel interior walls that is not enclosed. Roberts teaches a member 246 that has holes 254 formed therein. Holes 254 are partially filled with prongs 252. (See column 10, lines 19-38, and FIG. 18). Additionally, Roberts mentions that expansible material 18 may flow into central space 243, further illustrating that the central space 243 is not enclosed.

Dependent claims 3-8, 10-12 and 15-20 are also patentable by being dependent on an allowable base claim.

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To the extent the Examiner intends to take Official Notice of known methods to tune a cavity for sound attenuation, Applicant seasonably requests that the Examiner provide documentary evidence to support the taking of Official Notice as is required by 37 CFR § 1.104(d)(2) and MPEP § 2144.03.

### CONCLUSION

In view of the above amendment and remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge our Deposit Account No. 18-0013, under Order No. 65765-0032 from which the undersigned is authorized to draw.

Dated: June 27, 2005  
(the 26<sup>th</sup> falling on a Sunday)

Respectfully submitted,

By 

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